

SPECIAL SESSION

JOURNAL OF THE FLORIDA SENATE

APPENDIX

Opinion of the Attorney General relative to Suspension and Removal of Public Officers, Senate Rule 12 - appointment of Special Master and confidentiality of the Special Master's report:

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL

The Capitol
Tallahassee, Florida 32304

Honorable Mallory E. Horne
President, The Florida Senate
The Capitol

December 14, 1972
072-416

Re: OFFICERS—Suspension and removal of public officers; appointment of special master by Senate to receive evidence and make recommendations. §§112.41(2)(3)(4), 112.45, 112.47, F.S.; §7, Art. IV, 1968 Const., §4(a)(b), Art. III, 1968 Const. PUBLIC RECORDS—confidentiality of special master's report. § 119.01, F.S.

Dear President Horne:

This is in response to your request for an opinion upon the following questions:

1. May the Senate appoint a Special Master to conduct a hearing on the question of whether a suspended official should be removed or reinstated and to make recommendations to the Senate based on the evidence adduced at such hearing?
2. May the Senate provide, by Rule, for the confidentiality of the Special Master's Report until such time as the Senate meets to debate the suspension?"

Answering your first question: Section 7 of Article IV, 1968 Constitution, provides that

"The Senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership." (e.s.)

There is ample statutory authority for the appointment of a Special Master to conduct the hearing and take the testimony in suspension matters. Subsection (2) of Section 112.41, Florida Statutes, requires the Senate to conduct a hearing on suspensions "in the manner prescribed by rules of the Senate adopted for this purpose." And Subsections (3) and (4) of this section authorize the Senate to appoint either a select committee or a special master or examiner to receive the evidence and make recommendations to the Senate. The validity of the appointment of a select committee for this purpose was upheld in *Sheffey v. Futch*, 250 So.2d 907, 910 (Fla. 1971). The court said that it is a "legislative prerogative to delegate these hearings to a committee . . ." And the same "legislative prerogative" exists as to the appointment of a special master to conduct the hearing and make the recommendations.

Accordingly, your first question is answered in the affirmative.

Answering your second question: Under Section 4(a) of Article III, 1968 Constitution, each house of the Legislature is authorized to determine its rules of procedure. And under Section 4(b), *id.*, sessions of each house are required to be public, "except sessions of the senate when considering appointment to or removal from public office may be closed." In *State ex rel. X-Cel Stores v. Lee*, 166 So. 568, 571 (Fla. 1936), in holding that a bill was properly enacted into law, it was said that the Constitution "gives the Legislature full power to adopt and enforce its own rules of legislative procedure" and that

"So long as the legislative rules are in harmony with the constitutional plan for making laws, proceedings had in conformity thereto are not invalid."

The court went on to say that

"There is nothing in section 16 of article 3 of the Constitution that forbids either a rule, or a commonly accepted practice on the Legislature's part, that leads to the constitutional result that each 'law' enacted by the Legislature shall contain a title adopted for it by legislative action, which title shall briefly express the single subject of such law." (e.s.)

Rule Twelve of the Senate's Rules relating to the Senate's select committee appointed to investigate and hold hearings on suspensions has apparently long provided for the hearings, and the reports of that committee, to be kept secret. This Rule is in harmony with the constitutional provision referred to above, authorizing the Senate itself to hold secret sessions with respect to suspensions, and with Section 112.47, Florida Statutes, providing that the Senate or its select committee may conduct portions of the hearing in executive session "if the senate rules so provide." It is also in harmony with the statute relating to suspensions, as the only statutory requirement for filing a written report relates to the report of the Senate itself. See Section 112.45, *id.*, providing that

"The secretary of the senate shall, as soon as reasonably possible following the action of the senate, file with the department of state a report of the action of the senate, including an order signed by the president and the secretary specifying the action taken by the senate." (e.s.)

In view of Section 112.47, *supra*, the Senate's broad Rule-making powers, and its commonly accepted practice of keeping secret the reports of its select committee in suspension matters, as has apparently long been incorporated in its Rule Twelve, I have considerable doubt that the courts would strike down a Rule providing that the hearings and reports of a Special Master may be kept confidential until such time as the Senate meets to debate the suspension.

Moreover, it is doubtful that the courts would hold that the Public Records Law, Section 119.01, Florida Statutes—requiring public records to be open to inspection by any citizen of Florida—is applicable to the special master's report. This is so because the Law expressly exempts from its inspection requirements all public records "which presently are deemed by law to be confidential . . ." As noted above, the confidential nature of the hearings on suspensions has been recognized by the constitution as well as by statute; and it necessarily follows that the interim report and recommendations of the hearing committee or special master might be deemed to be of the same nature and thus within the exception to the Law referred to above. It might be noted also that Rule Twelve (12.5) refers to the "committee work product" in connection with suspensions and requires such work product to be kept a secret "except so much thereof upon which the bans of secrecy shall have been specifically lifted by the Senate while in executive session." Thus, the Special Master's report and recommendations might be held to be within the "work product" exception to the Public Records Law.

Your second question is answered in the affirmative.

Summary

The Senate may appoint a special master to conduct hearings and make recommendations to the Senate in suspension matters and may provide, by Rule, for the confidentiality of the special master's report until such time as the Senate meets to debate the suspension.

Sincerely,
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